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Kirk Rothrum

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

KIRK ROTHNUM, d/b/a bangin-)	CASE NO. 2:15-CV-3319
beats.com,)	
)	COMPLAINT FOR:
Plaintiffs,)	
vs.)	1) COPYRIGHT INFRINGEMENT
)	(Britney Spears - <i>Piece</i>
)	<i>of Me</i>)
SONY MUSIC ENTERTAINMENT, a)	2) COPYRIGHT INFRINGEMENT
Delaware general partnership;)	(Travis Porter - <i>Ayy</i>
RCA RECORDS, INC., a Delaware)	<i>Ladies</i>)
corporation; ZOMBA RECORDING,)	
LLC, a Delaware limited)	DEMAND FOR JURY TRIAL
liability company;)	
)	
Defendants.)	
)	

Plaintiff Kirk Rothrum hereby alleges as follows:

THE PARTIES

1. Plaintiff KIRK ROTHNUM ("Plaintiff") is an individual who at all relevant times alleged herein was domiciled in the State of New York.

2. Plaintiff is informed and believes and based thereupon alleges that defendant Sony Music Entertainment ("SME") is a general partnership organized and existing under the laws of the

1 State of Delaware with its principal places of business in New
2 York, New York and in Beverly Hills, California. Plaintiff is
3 informed and believes and based thereon alleges that SME is
4 qualified to do business in the State of California.

5 3. Plaintiff is informed and believes and based thereon
6 alleges that defendant RCA RECORDS, INC. ("RCA") is a corporation
7 organized and existing under the laws of the State of New York,
8 with its principal places of business in the State of New York.
9 Plaintiff is further informed and believes and based thereupon
10 alleges that RCA is a subsidiary of SME.

11 4. Plaintiff is informed and believes and based thereon
12 alleges that defendant ZOMBA RECORDING, LLC ("Zomba") is a limited
13 liability company organized and existing under the laws of the
14 State of Delaware with its principal place of business in New York,
15 New York. Plaintiff is further informed and believes and based
16 thereon alleges that Zomba is a subsidiary of SME. Plaintiff is
17 further informed and believes and based thereon alleges that Zomba
18 has qualified to do business in the State of California and has its
19 office in the city of Beverly Hills in the County of Los Angeles.

20 **JURISDICTION & VENUE**

21 5. This Court has exclusive jurisdiction over plaintiff's
22 claims under 28 U.S.C. §1338 in that the copyright infringement
23 claims alleged arise under the Copyright Act of the United States,
24 17 U.S.C. §501 et seq.

25 6. Venue is proper in this judicial district pursuant to 28
26 U.S.C. 1400(a) because defendants reside in or may be found in this
27 judicial district.

28 / / /

BACKGROUND FACTS COMMON TO ALL CLAIMS FOR RELIEF

7. Plaintiff is the owner of www.bangin-beats.com (the "Web Site"), which is one of the preeminent web sites for musical artists seeking drum samples, sound designs and sound effects. Plaintiff's sounds have been featured on songs by artists such as 50 Cent, Lloyd Banks, Eminem, Jay-Z and Rihanna, to name a few.

8. Customers of the Web Site can purchase individual sound kits, or collections of kits which are referred to as a "Series", which Series are in turn contained in collections which are referred to as "Libraries". Customers who purchase sound files from the Web Site are granted a non-exclusive, non-transferrable license to use the files on equipment at the purchaser's residence or place of business in their sound recordings.

9. On or about November 27, 2007, Plaintiff obtained Sound Recording Copyright SR0000622061 from the U.S. Copyright Office for the Bangin Beats Sound Design Library ("Library"). The Library was first published on August 1, 2007, and it contained the following Series: Bang Theory; Bangin Flutes; Chop Shop; Dirt Rhodex; Elementz; Gutta Logic; Lab Dwella; Misc. Xtraz; Nasty Next; Oodlez; Perfect Jux; Weaponz; Windstorm.

10. The Oodlez series contains the following computer files UH1, UH2 and OOOO and OHYEAH, which contain sound recording samples of a woman seductively moaning and voicing the phrases "uhh", "uhh", "oooh" and "oh yeah", which files are named UH1, UH2, OOOO and OHYEAH, respectively (the "Bangin Beats Samples").

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FIRST CLAIM FOR RELIEF

Copyright Infringement

Britney Spears' *Piece of Me*

Against Sony Music Entertainment and Zomba Recording

10. Plaintiff incorporates paragraphs 1 through 9, inclusive, as though set forth herein in full.

11. In or about November, 2007, Zomba, in conjunction with SME and RCA, released the Britney Spears album entitled Blackout, which contained the hit song *Piece of Me*.

12. Defendant Zomba obtained Sound Recording Copyright #SR0000609604 from the U.S. Copyright Office for Blackout on or about November 1, 2007.

13. Plaintiff is informed and believes and based thereupon alleges that the sound recording *Piece of Me* repeatedly emphasizes recordings of a woman voicing the phrases "uhh" and "oh yeah" in a seductive manner (the "Britney Phrases").

14. The Britney Phrases are repeated regularly throughout the song and are used to such an extent that most of the on-line lyric databases assume that the Britney Phrases are a part of the lyrics. The Britney Phrases are featured at the following time marks on the digital copy of the *Piece of Me* sound recording available from iTunes:

1. 00:00:02 (Uhh)
2. 00:00:04 (Oh Yeah)
3. 00:00:07 (Uhh)
4. 00:00:09 (Oh Yeah)
5. 00:01:01 (Uhh)
6. 00:01:03 (Oh Yeah)
7. 00:01:05 (Uhh)
8. 00:01:07 (Oh Yeah - Without beat underlying)
9. 00:01:59 (Uhh)
10. 00:02:01 (Oh Yeah - With echo for emphasis)
11. 00:02:03 (Uhh)
12. 00:02:05 (Oh Yeah - Without beat underlying)

1 13. 00:02:26 (Oh Yeah)
2 14. 00:03:00 (Oh Yeah)
3 15. 00:03:08 (Oh Yeah - Without beat underlying, very last
4 sound in song)

5 15. In the official music video for *Piece of Me*, the video
6 ends with the artist, Britney Spears, mouthing the phrase "Oh
7 Yeah", as if she had recorded the sound. In short, the Britney
8 Phrases make up an important, structural component of the sound
9 recording.

10 16. In or about October, 2014, Plaintiff was driving and
11 heard the song *Piece of Me* on the radio and immediately noticed the
12 similarities between the Britney Phrases contained in the *Piece of*
13 *Me* recording and two of the Bangin Beats Samples, specifically the
14 UH1 and OHYEAH files.

15 17. After further analysis of the *Piece of Me* sound
16 recording, including isolating the samples, Plaintiff concluded
17 that the Britney Phrases were in fact the actual Bangin Beats
18 Samples contained in the Oodlez Series, specifically the files UH1
19 and OHYEAH.

20 18. Plaintiff is informed and believes and based thereon
21 alleges that the UH1 and OHYEAH files incorporated into the *Piece*
22 *of Me* sound recording were not purchased from Plaintiff by
23 defendants or anyone acting on their behalf. As such, no license
24 to use the UH1 or OHYEAH files was given to defendants, and the
25 sound recording for *Piece of Me* infringes Plaintiff's sound
26 recording copyright for the Bangin Beats Samples in violation of 17
27 U.S.C. 114(b) by literally copying and including the sound
28 recording contained on those files.

/ / /

1 19. Plaintiff is informed and believes and based thereon
2 alleges that *Piece of Me* was an enormous domestic and international
3 success. According to Soundscan, which tracks domestic sales of
4 songs and albums, through October 19, 2014, Blackout sold 845,877
5 physical units (e.g., compact discs) and 181,279 digital units,
6 plus 1,795,146 digital units (e.g., iTunes downloads) and 54,095
7 digital remixes. Plaintiff is further informed and believes and
8 based thereon alleges that defendants sold a significant number of
9 ringtones which contained the infringing samples, both domestically
10 and in foreign markets.

11 20. Plaintiff is further informed and believes and based
12 thereon alleges that defendants have sold millions more copies
13 internationally through iTunes under license with Apple, located in
14 Cupertino, California, as well as through other domestic companies
15 which sell digital copies of songs to the international market.

16 21. Plaintiff is informed and believes and based thereon
17 alleges that when a new song or album is released by Defendants on
18 iTunes, as well as other domestic digital music platforms,
19 Defendants upload a computer file containing the master recording
20 to Apple's servers. Defendants are also required to execute
21 contracts with Apple for the sale of their content in foreign
22 territories outside of the United States. After such contracts are
23 executed, Apple makes the content available on iTunes in foreign
24 jurisdictions.

25 22. As a direct and proximate result of defendants'
26 infringement and the worldwide sale, distribution and performance
27 of the infringing work, plaintiff has been damaged in an amount
28 according to proof at trial. As a further direct and proximate

1 result of defendants' infringement, defendants' have been unjustly
2 enriched by the receipt of mechanical royalties, tour revenues and
3 other receipts directly attributable to their sale, distribution
4 and performance of the infringing work throughout the United States
5 and the world, which profits should be disgorged. (17 U.S.C.
6 §504(b)).

7 23. Alternatively, plaintiff is entitled to elect to receive
8 statutory damages. (17 U.S.C. §504(c)).

9 24. Plaintiff is further entitled to an award of attorneys'
10 fees and costs. (17 U.S.C. §505).

11 SECOND CLAIM FOR RELIEF

12 Copyright Infringement

13 Travis Porter's *Ayy Ladies*

14 Against Sony Music Entertainment and RCA

15 25. Plaintiff incorporates paragraphs 1 through 9, inclusive,
16 as though set forth herein in full.

17 25. On or about May 25, 2012, defendants released the album
18 entitled From Day 1 by the hip hop artist known as Travis Porter.
19 The album From Day 1 contained the single entitled *Ayy Ladies*
20 (*feat. Tyga*) ("*Ayy Ladies*").

21 26. On or about June 4, 2012, SME obtained Sound Recording
22 Copyright SR0000701460 for From Day 1.

23 27. When Plaintiff first heard *Ayy Ladies*, Plaintiff
24 immediately noticed that the *Ayy Ladies* sound recording contained
25 vocalizations of the "uhh" and "oooh" phrases ("*Ayy Ladies*
26 Phrases") which sounded identical to the UH2 and O000 files on the
27 Oodlez Series.

28 / / /

1 28. After further analysis of the *Ayy Ladies Phrases* and the
2 sound recording, plaintiff determined that the vocalizations of
3 these sounds were in fact two of the actual Bangin Beats Samples
4 contained in the Oodlez Series, specifically the files UH2 and
5 0000.

6 29. Plaintiff is informed and believes and based thereon
7 alleges that the files incorporated into the *Ayy Ladies* sound
8 recording were not purchased from Plaintiff by defendants or anyone
9 acting on their behalf. As such, no license to use the Infringed
10 Files was given to defendants and the samples contained in the
11 sound recording for *Ayy Ladies* infringe Plaintiff's sound recording
12 copyright for the UH2 and 0000 files in violation of 17 U.S.C.
13 114(b) .

14 30. Plaintiff is further informed and believes and based
15 thereon alleges that defendants have sold a significant number of
16 copies internationally through iTunes under license with Apple,
17 located in Cupertino, California, as well as other domestic
18 companies which sell digital copies of songs to the international
19 market. Plaintiff is further informed and believes and based
20 thereon alleges that defendants sold a significant number of
21 ringtones which contained the infringing samples, both domestically
22 and in foreign markets.

23 31. Plaintiff is informed and believes and based thereon
24 alleges that when a new song or album is released by Defendants on
25 iTunes, as well as other domestic digital music platforms,
26 Defendants upload a computer file containing the master recording
27 to Apple's servers. Defendants are also required to execute
28 contracts with Apple for the sale of their content in foreign

1 territories outside of the United States. After such contracts are
2 executed, Apple makes the content available on iTunes in foreign
3 jurisdictions.

4 32. As a direct and proximate result of defendants'
5 infringement and the worldwide sale, distribution and performance
6 of the infringing work, plaintiff has been damaged in an amount
7 according to proof at trial. As a further direct and proximate
8 result of defendants' infringement, defendants' have been unjustly
9 enriched by the receipt of mechanical royalties, tour revenues and
10 other receipts directly attributable to their sale, distribution
11 and performance of the infringing work throughout the United States
12 and the world, which profits should be disgorged. (17 U.S.C.
13 §504(b)).

14 33. Alternatively, plaintiff is entitled to elect to receive
15 statutory damages. (17 U.S.C. §504(c)).

16 34. Plaintiff is further entitled to an award of attorneys'
17 fees and costs. (17 U.S.C. §505).

18 WHEREFORE, Plaintiff Kirk Rothrum prays for judgment as
19 follows:

20 1. For actual damages in an amount according to proof at
21 trial;

22 2. For an order requiring defendants to disgorge all profits
23 attributable to the sale, distribution and performance of the
24 infringing work;

25 3. Alternatively, for statutory damages;

26 4. For pre-judgment interest;

27 5. For costs of suit;


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DEMAND FOR JURY

Plaintiff Kirk Rothrum hereby demands trial by jury.

Dated: May 3, 2015

LAW OFFICES OF KYLE P. KELLEY

By: 

Kyle P. Kelley
Attorney for Plaintiffs